

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVENS BALDO & LIGHTY, PLLC,

Plaintiff,

v.

ANTHONY J. DELLUNIVERSITA, et al.,

Defendants.

Case No. 2:18-CV-1600 (MKB) (JO)

JOINT STATUS REPORT

In accordance with the Court's April 5, 2019 Case Management and Scheduling Order, Plaintiff Stevens Baldo & Lighty, PLLC ("Plaintiff"), by and through counsel, Kenneth Walsh; Defendants Paul A. Delluniversita, Kelly Walsh, and Gail A. Delluniversita, individually and as the trustee of the Gail A. Delluniversita Living Trust (the "Non-Debtor Defendants), by and through counsel Moritt Hock and Hamroff LLP ("MHH"), and Defendant Anthony P. Delluniversita ("Anthony P."), appearing *pro se*, have conferred and hereby jointly notify the Court of the status of this matter below.¹

I. Status of the Case

1. Plaintiff and defendants exchanged initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure on or about April 1, 2019.

2. Both parties have propounded written discovery requests.

3. On June 20, 2019, Plaintiff made a motion to compel discovery from Defendant Anthony J. Delluniversita ("Anthony J.") (ECF Doc. No. 101), and on June 24, 2019, Plaintiff made a motion to compel discovery from Defendant Paul Delluniversita ("Paul"). ECF Doc. No.

¹ Defendant PCA Collectibles, Inc. has not appeared in this action.

102. Anthony P., as then-counsel for himself, Anthony J. and Non-Debtor Defendants, opposed both of these motions. ECF Doc. No. 103 and 104.

4. At a status conference on July 2, 2019, the Court granted Plaintiff's motion to compel and directed Defendant Anthony J. and Defendant Paul to produce all outstanding, responsive documents by July 9, 2019. ECF Doc No. 109.

5. On July 10, 2019, Anthony P., as then-counsel for himself, Anthony J. and Non-Debtor Defendants, requested additional time to produce the documents directed based on reasoning set forth in a letter motion (ECF Doc. No. 115), which the Court denied (ECF 07/12/19 Doc. Entry).

6. On July 12, 2019, Plaintiff made a motion for sanctions against Anthony J. and Paul for their failure to comply with the Court's order of July 2, 2019. ECF Doc. No. 117.

7. On July 23, 2019, Anthony P. withdrew as counsel for Anthony J. and Non-Debtor Defendants. ECF Doc. No. 119.

8. On July 24, 2019, the Court held status conference at which it granted in part and denied in part Plaintiff's motion for discovery sanctions. ECF Doc. No. 121.

9. On August 5, 2019, Michael Cardello, III and Robert S. Cohen of MHH filed a notice of appearance on behalf of Paul and Kelly Walsh. ECF Doc. Nos. 127, 128.

10. That same day, Mr. Cardello filed a letter requesting until September 13, 2019, to review the action, and extending Plaintiff's deadline for the joinder of additional parties and amending the complaint. ECF Doc. No. 129. The Court granted this request. ECF 08/06/2019 Doc. Entry.

11. On August 19, 2019, Michael Cardello, III filed a notice of appearance on behalf of Gail A. Delluniversita (“Gail”), and Danielle Jan Marlow filed a notice of appearance on behalf of Gail A. Delluniversita (“Gail”). ECF Doc. Nos. 133, 134.

12. On September 12, 2019, Ms. Marlow filed a notice of appearance on behalf of Paul and Kelly Walsh, and Kelly Dana Schneid filed a notice of appearance on behalf of Paul, Kelly Walsh and Gail. ECF Doc. Nos. 143, 144.

13. At present, Michael Cardello, III, Danielle Jan Marlow, and Kelly Dana Schneid represent Non Debtor Defendants and are handling this matter.

14. Since MHH’s appearance, counsel has produced thousands of pages of documents on behalf of Non Debtor Defendants. It is anticipated that their production will be complete by the time the parties appear for the status conference on September 19, 2019.

15. On September 13, 2019, MHH, on behalf of Non-Debtor Defendants, moved for reconsideration of the Court’s July 24, 2019 Order in light of, *inter alia*, Non-Debtor Defendants’ production of the outstanding discovery.

16. On August 5, 2019, Gail was deposed by Plaintiff in a state court proceeding. MHH intends to make her available for further deposition, to the extent necessary, at a later date.

17. On September 9, Anthony J. filed a notice to appear *pro se* (ECF Doc. No. 142); however, on information and belief, Anthony J. is presently seeking to retain his own counsel.

18. On September 17, 2019, MHH intends to make Paul available for deposition.

II. Pending Disputes

19. At this time, there are no discovery disputes between Plaintiff and Non-Debtor Defendants that require judicial intervention

20. There does, however, exist a pending dispute between Plaintiff and Anthony J. concerning the status of outstanding discovery. Whereas Anthony J. served objections and responses to Plaintiff's first request for documents on or around June 25, 2019, since then, he has not participated in discovery. (Anthony J., by and through then-counsel and/or *pro se*, has filed three letter motions to stay proceedings based upon his health issues (ECF Doc. Nos. 105, 114, and 140); the Court has denied each request without prejudice (ECF 06/27/19 Doc. Entry, 07/12/19 Doc. Entry, ECF Doc. No. 146.). The last denial, in specific, was "without prejudice to the movant's right to seek scheduling relief as to particular discovery requests" (ECF Doc. No. 146).)

21. Further, there exists a pending dispute between Plaintiff and Anthony P. concerning certain Requests for Admission. Anthony P. served Requests for Admission on Plaintiff on June 28, 2019, when he was representing himself, Anthony J. and Non-Debtor Defendants. (Non-Debtor Defendants, now represented by MHH, have withdrawn these Requests, insofar as they were served on their behalf, with Plaintiff's permission to serve revised Requests for Admission in the near future.) Plaintiff served responses to these Requests for Admission on September 10, 2019; Defendant Anthony P. maintains that, in light of the untimely response, the Requests therein are deemed admitted.

III. Plaintiff's Request to Amend the Complaint

22. On May 17, 2019, Anthony P., then-counsel for Defendants Anthony J., Non-Debtor Defendants, and himself filed a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) and (9)(b) of the Federal Rules of Civil Procedure (the "Motion to Dismiss"), which Plaintiff opposed. ECF Doc. Nos. 81-95.

23. However, Plaintiff has requested leave to file an amended complaint. ECF Doc. No. 137.

24. The filing of a Third Amended Complaint would supersede the Motion to Dismiss.

25. Non-Debtor Defendants consented to Plaintiff's request to amend the Second Amended Complaint. ECF Doc. No. 138.

26. By order dated September 6, 2019, the Court directed any party opposing Plaintiff's motion to amend the Second Amended Complaint to submit reasons for their opposition by September 11, 2019. ECF Doc. No. 139.

27. On September 11, 2019, Defendant Anthony P. filed a letter opposing Plaintiff's motion to amend the Second Amended Complaint, to which Plaintiff's filed a response. ECF Doc. Nos. 141, 145.

28. On September 16, 2019, the Court directed Plaintiff to file a proposed Third Amended Complaint by September 18, 2019.

29. The parties await the Court's decision on Plaintiff's request for leave to amend.

Dated: September 17, 2019

<p>LAW OFFICES OF KENNETH G. WALSH <i>Attorneys for Plaintiff</i></p> <p>s/ Kenneth G. Walsh</p> <hr/> <p>Kenneth G. Walsh, Esq. 100 S. Bedford Road, 3rd Fl. Mt. Kisco, New York 10549 (929) 241-7307 kwalsh@kgwalshlegal.com</p>	<p>A.P. DELLUNIVERSITA & ASSOC., LLC <i>Attorney Pro Se for Defendant Anthony P. Delluniversita</i></p> <p>s/ Anthony P. Delluniversita</p> <hr/> <p>Anthony P. Delluniversita, Esq. 2 W. Main Street, Suite SE3A Bay Shore, New York 11706 (631) 251-7570 anthony@apdlaw1.com</p>
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s/ Danielle J. Marlow

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